No. 404

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

OFFUTT HOUSING COMPANY, A CORPORATION,
Petitioner,

vs.

COUNTY OF SARPY AND ROBERT M. EBY, TREASURER OF COUNTY OF SARPY, NEBRASKA,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA.

BRIEF FOR PETITIONER.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA.

BRIEF FOR PETITIONER.

REFERENCE TO OPINIONS BELOW.

The opinion of the Supreme Court of Nebraska (R. 195-214) is reported in 160 Neb. 320, 70 N. W. 2d 382. The opinion (oral) of the District Court of Sarpy County, Nebraska, which is unreported, is printed in the Appendix to the Petition for Certiorari at pp. 5-18. The findings and judgment of the District Court appear at R. 20-27.

JURISDICTION.

The judgment of the Nebraska Supreme Court (R. 194) was entered on May 6, 1955. A timely petition for rehearing was filed on May 26, 1955 (R. 214) and denied on June

24, 1955 (R. 214). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3), since a right and immunity is especially set up and claimed under the Constitution and statutes of the United States. The petition for certiorari was granted on November 14, 1955 (R. 215).

QUESTION PRESENTED.

The United States leased to petitioner for 75 years land on an Air Base subject to the exclusive jurisdiction of the United States, for the construction and operation of housing for Air Force personnel. Title to the buildings was vested in the United States. The question presented is whether Nebraska may collect from petitioner a property tax (1) on the buildings and (2) on household appliances and office equipment located in the buildings and owned by petitioner. This involves the question whether Congress has waived the immunity of such property from state taxation. Subordinate questions, both of which must be answered in the affirmative if respondents are to prevail, are:

(1) Whether the Wherry Military Housing Act contains any Congressional waiver of immunity from state taxation for property located on enclaves over which the United States has exclusive jurisdiction.

(2) If so, does a tax on the full value of the buildings, appliances and equipment come within the terms of a statute permitting a tax on the "lessee's interest," made or created pursuant to the provisions of that Act.

STATUTES INVOLVED.

The pertinent provisions of the Wherry Military Housing Act of August 8, 1949, 63 Stat. 570, 12 U. S. C. § 1748, both before and after the amendments of August 11, 1955, and of the Military Leasing Act of August 5, 1947, 61 Stat. 774, 5 U. S. C. § 626a-3 *et seq.*, are quoted in the Appendix,

infra, pp. 61-68. The statutory framework which gives rise to this case may be outlined as follows:

In 1949 the military establishment was faced with a problem of loss of skilled personnel because of lack of sufficient housing facilities and the "deplorable" housing conditions at military installations (S. Rept. No. 410, p. 2, H. Rept. No. 854, p. 4, 81st Cong., 1st Sess.[1]). Although in the past, when the Armed Services were small, the Government itself had provided living quarters for service men (H. Rept. No. 854, p. 4), to have provided the estimated 261,555 family units needed in 1949 would have cost the Government from two to three billion dollars (S. Rept. No. 410, p. 3; H. Rept. No. 854, p. 4). To meet this need at

1. "Representatives of the three branches of the National Military Establishment, appearing before your committee, strongly urged the enactment of this measure. They stressed, in terms of the efficiency of the armed services, the urgent need for adequate housing facilities to serve families of their personnel. They made it abundantly clear that, to attract and hold the highly trained, experienced, and technical personnel now required by the Departments of the Army, the Navy, and the Air Force, it is essential that this personnel be afforded an opportunity to live comfortable and normal lives, insofar as military duty permits, on a reasonable parity in terms of housing, with the average American citizen. The fact that most of them do not now have this privilege is a major contributing factor to the existence of a morale problem that bears on the effectiveness of our armed forces, to the difficulties in recruiting able men, and to the large percentage of trained men who are failing to reenlist at the expiration of their enlistment terms.

"Adequately training men to maintain and operate our present-day intricate war machines is an extensive and costly undertaking. Whenever a trained man fails to reenlist, the investment of the Government in his training is lost to the armed services involved and another man must be given similar training. The Air Force in September 1948 made an analysis of its enlisted personnel which indicated that only 59 percent of all married enlisted personnel intended to reenlist. However, 79 percent indicated that they would reenlist if the Government were to provide family housing. Those failing to reenlist include some of the best trained and most able men." H. Rept. No. 854, 81st Cong., 1st Sess., p. 4.

The problem still exists in 1955. See Senate Report No. 404, 84th Cong., 1st Sess., p. 19, on the Housing Act Amendments of 1955.

slight cost to the Government, through utilizing the services of private enterprise, the Wherry Act amended the National Housing Act (by adding Title VIII) so as to authorize the Federal Housing Administration (FHA) to insure mortgages on housing at or in the area of military installations, upon the certificate of the Secretary of Defense that such housing

> "is necessary to provide adequate housing for such personnel, that such installation is deemed to be a permanent part of the Military Establishment, and that there is no present intention to substantially curtail activities at such installation." (§ 803, 63 Stat. 570, 12 U. S. C. § 1748b (b) (2)).

The Act also authorized the Secretaries of the military services to lease federal land for housing purposes (§ 805, 63 Stat. 570, 12 U. S. C. § 1748d). The House Report (No. 854, 81st Cong., 1st Sess., p. 2) stated that:

> "* * * difficulties in obtaining suitable sites is frequently a deterrent to the development of housing by private enterprise in the vicinity of military installations, particularly in isolated areas. The leasing of such sites by the Military Establishment at nominal considerations would further make possible the achievement of lower rentals for the personnel of the establishment."

The Senate Report (S. Rept. 410, 81st Cong., 1st Sess., pp. 3-5, 8) expresses concern over whether the program will provide housing at rentals within the financial reach of the lower grades of military personnel, and states (pp. 4-5):

> "Your committee believes that every effort should be made to provide housing at rents within the means of as many enlisted personnel and junior officers as possible."

Section 805 of the 1949 Act authorized the leasing of property "under the authority of" the Act of August 5,

1947 (61 Stat. 774, 5 U. S. C. § 626s-3), without regard to limitations imposed by said Act with respect to the term or duration of the lease. The Act of 1947 had been enacted to permit the Secretaries of the Armed Services to lease for long terms industrial plants and facilities built by the Government at great expense during the war, which the Government wished to keep in stand-by status but which could be usefully operated by private industry when not needed for military purposes. (H. Rept. No. 623, 80th Cong., 1st Sess., p. 3). Section 6 of the 1947 Act (61 Stat. 775, 5 U. S. C. § 626s-6) provides:

> "The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated."

The purpose of the first sentence of this provision was to remove any doubt as to whether the interest of the lessee, as distinct from that of the Government as owner of the title, could be taxed in states which permitted taxes upon leasehold interests (see pp. 29-32, *infra*). The second sentence was intended to permit renegotiation of the lease, if Congress by subsequent legislation permitted local taxation of the property leased, which means the property owned by the Government (H. Rept. 623, 80th Cong., 1st Sess., p. 3).

In 1955 the Title of the Housing Act dealing with military housing was revised (Public Law 345, 84th Cong.) so as to eliminate for future projects the provisions of the 1949 Act here relied upon as waivers of immunity from local taxation.[1] Housing constructed by private contractors

1. The new versions of Sections 805 and 807 are printed in the Appendix, *infra*., p. 64.

under the 1955 Act will be operated as well as owned by the Government, which insures that it will not be taxable by States and localities. But Section 408 of the 1955 Act leaves the prior law applicable to projects certificated before June 30, 1955. The significance of the 1955 Act here is that it shows that after experience under the 1949 law and an increasing body of litigation in which a number of states were beginning to attempt collection of property taxes, Congress turned to a method of providing military housing which would not on any theory be subject to local taxation.

STATEMENT.

This is a suit by petitioner against the County of Sarpy and its Treasurer for a declaratory judgment that it is not required to pay the County certain taxes assessed against it and for ancillary injunctive relief (R. 1-8). The District Court for Sarpy County adjudged that Nebraska had no authority to impose the taxes in question (R. 20-27) but the Supreme Court of Nebraska reversed (R. 194-214).

The facts are not in dispute. Offutt Air Force Base (formerly Fort Crook), the headquarters of the Strategic Air Command (R. 39), is owned by and subject to the exclusive jurisdiction of the United States.[2] The Commander of the Base determined that a housing project was needed in order to secure and retain skilled personnel (R. 40, 43-45), and the Department of the Air Force submitted to the FHA the certificate required by the Wherry Act (Ex. 3, R. 130-131, 28) that the housing project is necessary to provide adequate housing for military personnel assigned to duty at that installation.

The Air Force and the FHA thereupon proceeded with

2. Nebraska ceded exclusive jurisdiction (Neb. R. R. S. 1943, §§ 72-601, 602, 604), and the United States has accepted it (Ex. 2, 2(a), R. 125-130, 28).

the project. On January 18, 1951, the Air Force leased 63 acres of land on the Air Base to petitioner, to be used for the erection of a 611-unit housing project, in accordance with project specifications approved by the Air Force and the FHA (Ex. 4, R. 132-143, 28). Some of this land had been donated to the United States in 1949 by the Omaha Chamber of Commerce (R. 118, 126, 189). The United States had immediately accepted exclusive jurisdiction over the property, with the consent of the Governor of Nebraska (Ex. 2, R. 125-126, 28).

The lease was in the standard form used by the Air Force under the Wherry Act at that time (R. 68, 75). Only a nominal rental of $100 per year was to be paid to the Government (Ex. 4, R. 133), in order "to keep the rents down" for the subtenants (R. 76-77).[3] Tenants were to be designated by the Commanding Officer from among personnel of the Air Force; only if Air Force personnel were not designated or available could the lessee rent to other persons (Ex. 4, R. 134).

Paragraph 11 of the lease, which provides that title to the buildings shall be in the United States, reads as follows (Ex. 4, R. 138):

> "That upon the expiration of this lease, or earlier termination, all improvements made upon the leased premises *shall remain the property of the Government* without compensation, provided that the provisions

3. The nominal character of the rental paid the Government made meaningless Paragraph 8 of the lease (Ex. 4, R. 137), which provided for renegotiation and reduction of the rental if Congress consented to the imposition of taxes "upon the property owned by the Government and included in this lease (as opposed to the leasehold interest of the Lessee therein)." Paragraph 8 also provided:

> "That the Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the Lessee with respect to or upon the leased premises."

of this Condition shall not apply to facilities erected by utility companies on the leased premises for the purpose of furnishing utility services to the housing project. The buildings and improvements erected by the Lessee, constituting the aforesaid housing project, *shall be and become, as completed, real estate and part of the leased land, and public buildings of the United States,* leased to Lessee for the purpose of serving the governmental and public purpose of providing military housing in accordance with Title VIII of the National Housing Act, and in accordance with the provisions of this lease, and subject to the term of this lease, and any renewal or extension of this lease." (Emphasis supplied.)

Other provisions of the lease require the lessee to protect the premises against fire, to comply with rules as to use and occupancy prescribed by the Commander, to permit Government inspection, to maintain the property in satisfactory condition, all disputes as to maintenance after termination of the mortgage being decided by the Air Force, and to repair, replace or pay the United States for any damaged or destroyed property (Ex. 4, R. 138-141). The lease could not be transferred or assigned "without the prior written approval of the Secretary of the Air Force" (R. 136).

Maximum rentals were to be fixed by the FHA with the concurrence of the Air Force[4] and could not be increased without the consent of the FHA (R. 68, 93, 66-67, 73-74, 88, 91; Ex. 8, Art. V, VII, R. 150, 152, 30; Ex. 14, R. 167n, 169, 89; FHA Rules and Regulations, Sec. V, Para. 4, Ex. 12, R. 161-162). In establishing the original maximum rentals, the military authorities "take into consideration the ability of the base personnel to pay" (R. 66, 91); they are "interested in keeping the rents as low as possible" (R. 93). Rentals varied with the rank of the tenant, so

4. After expiration of the mortgage insurance, rentals are subject to the control of the Air Force (Ex. 4, R. 136, 141).

1. The Wherry Act Contains No Waiver of Immunity.

No such legislative intention was manifested when the Wherry Act was enacted in 1949. No one could tell from reading the statute on its face that there was any waiver of the immunity from State taxation of property on Federal enclaves. The only pertinent comment in the course of the legislative history reflects an understanding that housing built on government reservations would not be taxable. During the Hearings before the House Committee, after Housing and Home Finance Administrator Foley had stated that he did not know what proportion of the projects would be built on Government-owned property, the following colloquy occurred (Hearings on Military Rental Housing before House Committee on Banking and Currency, H. R. 4491, 81st Cong., 1st Sess., p. 37):

> "Rep. Nicholson. If they were built on land other than the reservation, the housing would be taxed, would it not?
>
> "Mr. Foley. You mean buildings on lands adjacent to military installations but not owned by the military?
>
> "Rep. Nicholson. That is right. That would be subject to tax by the local community * * *."

Neither the Administrator nor anyone else at that time or later suggested that Rep. Nicholson's statement, which implied that only housing built off the reservations could be taxed, was too restrictive. If the Administrator or any of the Congressmen present had thought that buildings on as well as off the reservations would be subject to taxation, Mr. Nicholson's statement would not have been likely to go without comment.

The only section of the Wherry Act which dealt directly with state taxation is Section 807 (before 1955 amendment) (63 Stat. 570, 12 U. S. C. § 1748f), which provided that:

> "Nothing in this Title shall be construed to exempt any real property acquired and held by the [Federal

that lower-paid military personnel would pay less than officers (Ex. 14, R. 167; R. 64-65, 58-59). Rentals ranged from $51.25 to $67.25 for enlisted men, and from $68.25 to $89.25 for officers, depending on the number of rooms (Ex. 14, R. 167). These rentals are lower than those for comparable housing off the Base (R. 50).

Rentals were established by the Air Force and the FHA on the assumption that no state or local taxes would be paid (Ex. 13, R. 164, 87; R. 42-43, 56). The rentals originally fixed and in effect at the time of trial were based upon the Project Analysis of the FHA (Ex. 13, R. 163-166).[5] This Analysis contains the statement (R. 164) that it is "Processed on the assumption that the projects will not be subject to State, County or School Property Tax. If such taxes are assessed, rents will have to be adjusted accordingly." If such taxes are payable, the cost will be passed on in the form of higher rentals to the tenants of the project (R. 43, 91-92, 164).[6] This decreases the likelihood that skilled personnel will remain in the Air Force (R. 62-63, 45).

Petitioner is required to provide and maintain household appliances in the apartments (R. 111). At the expiration of the lease such appliances or their replacements must be left in the buildings as the property of the Air

5. Respondents (Br. in Opp., p. 6) and the court below (R. 201) quote figures from the FHA Project Analysis (Ex. 13, R. 163-166) in a way which implies that petitioner is making large profits from this operation. But respondents fail to deduct the amortization charges (estimated by FHA at $296,946 for debt service requirements (R. 166)), which far exceed all other cost items, from their "net annual income" figure of $326,798. The Project Analysis, of course, contemplated not only low rentals for the military subtenants, but also a reasonable profit for the lessee; no one would undertake a project unless it was planned on that basis. In fact, however, the record shows that petitioner's operation "has not been profitable" (R. 110).

6. A rental increase to cover property taxes has since been allowed, conditional on the outcome of this litigation.

Force (R. 111). The lease was for a 75-year period; it is terminable for default at the option of the Government (Ex. 4, R. 132, 140).

The lease provides that the Air Force is to furnish fire protection and policing (Ex. 4, Par. 9, R. 137-138). The testimony shows that the Air Force also furnishes sewage and water service (R. 103-104, 110-111) and access roads (R. 110); the lessee maintains the roads within the leased property (R. 107, 110). The Base is not in a school district or municipality (R. 63; Ex. 1, R. 124). The record also shows that such documents as conditional sale contracts, mortgages and deeds for property are recorded with the Clerk of Sarpy County (R. 182, 189, 190B, 191, 192B, 193), but that he charges fees for those services (R. 117).

As contemplated by the lease, on April 1, 1951, petitioner executed a mortgage in the amount of almost $5,000,000 to the Manufacturers Trust Company of New York on its leasehold interest in the property (Ex. 15, R. 169-182, 101). The mortgage was insured by the FHA (R. 92).[7]

Petitioner was incorporated on a model charter form prescribed by FHA (R. 90, 70; Ex. 8, R. 147-156, 30) whereby FHA received the preferred stock of petitioner (R. 92; Ex. 14, R. 169, 89). This gave it voting control in certain circumstances, and the right to control the rentals charged (Ex. 8, R. 149-152; FHA Rules and Regulations, Sec. V, par. 4, Ex. 12, R. 161-162).

The apartments were then constructed, and were occupied entirely by military personnel and their dependents (R. 42). There was testimony that the buildings had a life expectancy of about 35 years (R. 108). They could (although not profitably for petitioner) be repaired and main-

7. This, of course, meant that there was no possibility that a default would result in the foreclosure of the Government's interest in the buildings, since any default would be made good by the FHA, which would then itself succeed to the right of the mortgagee.

tained to have a longevity beyond the term of the lease (R. 113).

Petitioner bought refrigerators, stoves, washing machines and dryers for the apartments, financing them by conditional sales contracts and chattel mortgages (Ex. 22-29, R. 190A-194, 116-117). These were owned by petitioner.

Since it had been assumed that the County could not lawfully tax the project (see p. 9, *supra*), petitioner did not list with the County Assessor of Sarpy County any property located on Offutt Air Force Base (R. 119-120). On June 23, 1952, the Assessor himself executed a purported "Business and Professional Schedule of Personal Property," which he claimed to be owned by petitioner and subject to taxation (R. 120; Ex. 5, R. 144 A, B, 29). The form is divided into parts for tangible and intangible property. Under part F, entitled "Furniture and Fixtures—Tools and Equipment", the Assessor listed office furnishings which he valued at $205, and household appliances, which he valued at $69,695. Under part I, the tangible property schedule, entitled "Improvements on Leased Land", the Assessor inserted the amount $755,785, which, the Assessor admitted, represented his "opinion as to the value of the buildings" (R. 121).[8] The total amount of $825,685 was entered opposite the classification of "Apartment Houses" in part J of the form, and also, under Item 135 as the "TOTAL TANGIBLE" assessment. Nothing was entered under parts K and L as intangible property (which, the form states, is subject "only to an intangible tax of 25¢ on every $100 valuation" for Class "A" intangible property and 80¢ per $100 on Class "B").[9]

8. The form of tax schedule states, under part I, that "you will enter the value of all improvements owned by the business which are not assessed and taxed as real estate." (Ex. 5, R. 144B). This obviously means physical improvements.

9. See Neb. R. R. S. 1943, §§ 77-702; 1953 Cum. Supp. §§ 77-703.

The Assessor executed a similar return for 1953, after completion of the project (R. 120-121, Ex. 6, R. 144C, 47) in which he valued the property at $2,778,580.

On the basis of the 1952 schedule the respondents levied taxes against petitioner in the amount of $10,783.45[10] (R. 47). Petitioner did not pay the taxes assessed (R. 15, 19), and the respondent County Treasurer threatened to cause a distress warrant to be issued to collect the taxes involved (Ex. 7, R. 145, 30).

Petitioner thereupon brought this suit in the District Court for Sarpy County for a declaration that Nebraska and Sarpy County were without power or authority to levy the taxes in question (R. 1-8). After trial the District Court ruled in petitioner's favor (R. 20-27). See also Appendix to Petition, pp. 5-18. In its opinion that court stated that "under the terms of the lease in question the actual legal title to the apartments, the dwelling units, the buildings themselves, is in the United States Government, exactly the same as it is on the land" (App. to Pet., p. 8), and that they were therefore "beyond the power of Sarpy County to tax as such." (*Id.* p. 10). The court made no "commitment as to whether there might be some taxable leasehold interest" which would be "the very most that Congress has given any consent to tax, if they have given any consent at all" (*Id.* p. 10). But the court concluded that "by no stretch of reasonable construction can the listing of improvements on leased property, or the listing of apartment houses, as was done" here, "be properly construed to be returning for taxation the value of a leasehold interest therein. It is attempting to tax the improvements themselves" (*Id.* p. 14). As to the appliances and office equipment, the court held that under *Surplus Trad-*

10. The rate of tax was much higher than the rates permitted on intangible property, as described in the form. The County does not suggest that the tax rate on intangibles was being applied.

ing Co. v. *Cook*, 281 U. S. 647, personal property on a military base over which the United States had exclusive jurisdiction could not be taxed, and that also they could not possibly be regarded as within any consent given by Congress to the taxation of leasehold interests (*Id.*, pp. 13-14).

The Supreme Court of Nebraska reversed (R. 194-214). It held that Congress had re-ceded to Nebraska the right to tax lessee's interest in the housing project, and that "plaintiff's interest in the housing units and fixtures as owner thereof was and is taxable as personal property, together with the value of plaintiff's lease" (R. 214).

SUMMARY OF ARGUMENT.

I.

A. The housing project is built on a military reservation over which the United States has exclusive jurisdiction. The states cannot tax property, even privately owned, located on such enclaves, absent the consent of Congress. *Surplus Trading Company* v. *Cook*, 281 U. S. 647 (1930). The fact that some of the land was donated to the United States is irrelevant.

B. The court below held that Congress had consented to local taxation in Section 6 of the Leasing Act of 1947, which authorizes taxation of the "lessee's interest" in properties leased under that statute. We submit, however, that there has been no waiver of the federal immunity for property located on enclaves over which the United States has exclusive jurisdiction.

1. When Congress means to waive jurisdiction over land already subject to exclusive federal authority, it does so in express terms. The 1949 Military Housing Act con-

tains no such express provision, and the only reference to the problem in its legislative history reflects an understanding that housing on federal reservations will not be taxable. Section 805, which authorizes leasing "under the authority of" the 1947 Act, does not manifest any intention to waive immunity on federal enclaves, or to incorporate any but the authorizing provision of that Act. The 1947 provision was meant to prevent private operators of leased industrial facilities not required for public use from having a tax advantage over their competitors. This reason is inapplicable to military housing, presently serving a public purpose and intended to furnish housing facilities at low rentals in areas where private facilities are inadequate.

2. Furthermore, Section 6 of the 1947 Act is shown by its history to have been intended to be declaratory of existing law, to insure that states already taxing leasehold interests could continue to do so, not to broaden the states' taxing authority. The discussion at the hearing in which the provision was drafted makes sense with respect to lessee's interests in land owned by the Government but not contained in any exclusive federal area, which had previously been taxable, but not as to federal enclaves where even private property was not locally taxable. To hold that the lessee's interests in such enclaves could be taxed would result in the anomalous situation of property owned by the federal government and leased to private persons being taxable while immediately adjacent property owned by private persons or leased to private persons would not be taxable. It is submitted that such an intention cannot be imputed to Congress, and that Section 6 was not intended to apply to areas over which the United States has exclusive jurisdiction.

II.

Even if the provision in Section 6 of the 1947 statute permitting taxation of the lessee's interest applies, it does not authorize the tax imposed here. For the tax here assessed was not upon a lessee's interest, but on the property itself. The assessor admitted that his assessment against the improvements was his "opinion as to the value of those buildings".

A. Although the court below seems to have held the contrary, the buildings were the property of the United States. The lease so provides. The Government has taken the principal financial risk in constructing the project, and it retains a large measure of control over the project's operations. It determines who may occupy the apartments, prescribes the maximum rents, and owns the controlling voting interest in petitioner, leaving petitioner little more than a paid managing agent. The Government's interest is substantially greater than that of the ordinary lessor-owner of property. There is thus no basis for respondents' contention that the lease gives the Government only a sham title, even if a reason for placing title to the buildings in the Government may have been to avoid local property taxes. *Cf. Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110. Furthermore, tax exemption serves a proper governmental purpose, since one of the objects of Congress in providing for the leasing of federally-owned sites for such projects was to "make possible the achievement of lower rentals for the personnel" (H. Rept. No. 854, 81st Cong., 1st Sess., p. 5), and local taxes would be passed on to the military subtenants (R. 43). Inasmuch as the federal government (or petitioner) and not the state or locality provides or pays for almost all of the governmental services—schools, fire, police, sewage, water, roads—there is no good reason why local property taxes should be paid.

B. This Court, and not the State court, has the final say both as to the meaning of contracts and leases to which the United States is a party and as to the characterization of a State tax affecting federal rights. Here, as in *United States* v. *Allegheny County*, 322 U. S. 174, a state assessed the full value of government-owned property against a private lessee of that property. In that case the Court held this to be an invalid tax on the property itself, not a tax on any lessee's interest. The same is true here.

C. As to the appliances assessed by the County, they are owned by the petitioner. They are not covered by any lease from the Government, and accordingly, are not reached by the provision in Section 6 authorizing the taxation of "the lessee's interest, made or created pursuant to the provisions of this Act". Their status is that of any private property on an exclusive federal enclave, without any waiver of the federal immunity. Such property may not be taxed by the states. *Surplus Trading Co.* v. *Cook*, 281 U. S. 647 (1930).

ARGUMENT.

I.

THE TAXES HERE IMPOSED ARE INVALID BECAUSE LEVIED ON PROPERTY IN AN AREA SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES.

A. The States Cannot Tax Property Located on Enclaves Over Which the United States Has Exclusive Jurisdiction.

The property assessed by respondents is all located on the Offutt Air Force Base. Nebraska has ceded, and the United States has taken pains to accept, exclusive jurisdiction over this area.

Absent the consent of Congress, the State and County have no more jurisdiction to tax property located on such an enclave than to reach property completely beyond their borders. "A State cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States." *Standard Oil Co. v. California*, 291 U. S. 242, 245 (1934). "Wherever the United States has such [exclusive] jurisdiction the State would have no authority to lay the tax." *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 140, 141 (1937). "The right of a State to tax realty directly depends primarily upon its territorial jurisdiction over the area. * * * Exclusive legislative power is in essence complete sovereignty. That is, not only is the federal property immune from taxation because of the supremacy of the Federal Government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon that enclave." *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558, 562-563 (1946).

Many cases, in addition to those just quoted, establish that State laws, including State tax laws, are inapplicable to land over which the United States has exclusive jurisdiction. Closely in point is *Surplus Trading Co.* v. *Cook*, 281 U. S. 647 (1930), in which blankets owned by a private corporation but located on such a military reservation were held not subject to the property taxes of the Arkansas county in which the reservation was located. *United States* v. *Unzeuta*, 281 U. S. 138 (1930), decided at the same term, held that Nebraska had no jurisdiction over a murder committed on a railroad right-of-way within the Fort Robinson military reservation. *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439 (1929), held that State rules of liability for negligence were inapplicable to a hotel operated under lease from the United States in a national park over which Congress had exclusive jurisdiction. And *Benson* v. *United States*, 146 U. S. 325 (1892), holds that the United States had exclusive jurisdiction over a murder committed on farmland located on a military reservation.

Respondents assert that *Surplus Trading Co.* v. *Cook* is a "frail precedent from another era," and seek to imply that it is no longer authoritative (Br. in Opp., p. 10). But no subsequent case casts doubt upon that decision. On the contrary, the rule for which it and many other cases stand has since been recognized in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 140 (1937), *Standard Oil Company* v. *California*, 291 U. S. 242, 244-245 (1934), *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 529 (1938), *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558, 562 (1946), and *Howard* v. *Commissioners*, 344 U. S. 624, 627 (1953), in each of which the *Surplus Trading* case has been cited approvingly. See to the same effect *Pacific Coast Dairy* v. *California Department of Agriculture*, 318 U. S. 285, 294 (1934); *Johnson* v. *Yellow Cab Co.*, 321 U. S. 383, 385 (1944).

Respondents argued below (Br., p. 13), however, that

"private housing units although rented to military personnel are not 'Forts, Magazines, Arsenals, Dockyards and other needful Buildings,' " and therefore did not fall within the constitutional classification subject to exclusive Federal jurisdiction. This Court has held, however, that the constitutional provision is not limited to military structures, but extends to "whatever structures are found to be necessary in the performance of the functions of the Federal Government." *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 143 (1937); *Silas Mason Co.* v. *Tax Commission*, 302 U. S. 186, 203 (1937). It would seem plain, in any event, that housing quarters for military personnel are "needful buildings" for military purposes. Such buildings are no less necessary because built and operated by private lessees of the Government land, for reasons of Government fiscal economy, than are barracks or quarters provided directly by the Government itself.

Moreover, the cases establish not only that the States possess no jurisdiction over private, personal property on exclusive Federal enclaves, but also that the jurisdiction of the United States is exclusive even with respect to portions of the enclave not used for any Federal purpose. The lands involved in the *Unzeuta*, *Arlington Hotel* and *Benson* cases were used for private railroad, hotel and farming operations, and yet the states were held to possess no authority over them.

Respondents also argued below that since a part of the land on which petitioner's housing project is located was donated to the United States by the Omaha Chamber of Commerce and not bought, it is not covered by Article I, Section 8, Clause 17 of the Constitution, which provides for exclusive Congressional authority "over all places *purchased* by the consent of the legislature of the State * * * for the erection of Forts, Magazines, Arsenals, Dockyards and other needful Buildings." Many cases estab-

lish, however, that even if property is not acquired by purchase, when the State cedes jurisdiction to the United States, the latter's exclusive authority is limited only to the extent that the State act of cession contains an express limitation. In the *Unzeuta* case, which involved Nebraska, as does the case here, the Court said with respect to land which had not been purchased (281 U. S. 138 at 142):

> "* * * When, in such cases, a State cedes jurisdiction to the United States, the State may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition. *Fort Leavenworth Railroad Company* v. *Lowe, supra*; *Chicago, Rock Island & Pacific Railway Company* v. *McGlinn*, 114 U. S. 542; *Benson* v. *United States*, 146 U. S. 325, 330; *Palmer* v. *Barrett*, 162 U. S. 399, 403; *Arlington Hotel Company* v. *Fant*, 278 U. S. 439, 451. The terms of the cession, to the extent that they may lawfully be prescribed, determine the extent of the Federal jurisdiction.
>
> "In the present instance, there is no question of the status of the Fort Robinson Military Reservation. Nebraska ceded to the United States its entire jurisdiction over the reservation save in the matter of executing process and opening and repairing roads or highways."

See also *Surplus Trading Co.* v. *Cook*, 281 U. S. at 651; *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 142.

Here Nebraska has not in any way relevant here limited the grant of exclusive jurisdiction to the United States. The *Unzeuta* case, which involved a similar cession by the State of Nebraska itself, should be decisive. Indeed, the Attorney General of Nebraska has on several occasions recognized that the State possesses no authority to tax property in such Federal enclaves.[11]

11. An opinion of July 8, 1941 (Reports of Attorney General of Nebraska, 1939-1942, p. 763), pertaining to the very installation involved here, reads in part:

"If this land was purchased with the consent of the Legis-

In any event, this Court has not construed the word "purchase" in the constitutional provision so strictly as

lature, the federal jurisdiction is exclusive of all state authority. If it was acquired otherwise than by purchase with consent, it may be said that the Legislature of Nebraska had the power to impose certain conditions when it ceded jurisdiction to the United States over the territory however, in the matter of ceding jurisdiction over Fort Crook, the Nebraska Legislature imposed no conditions except that the state retained concurrent jurisdiction for the service of civil and criminal process.

"So that whether the real estate was acquired by purchase with the consent of the Nebraska Legislature, or otherwise, in this particular instance the ultimate conclusion must be the same.

"It is our opinion that private personal property located within an army camp, such as Fort Crook, cannot be subject to state taxation."

In an opinion dated March 17, 1949, pertaining to personal property located at the United States Ordinance Plant in Saunders County, Nebraska, the Attorney General stated:

"We think it clear from the foregoing that as long as the acceptance of exclusive jurisdiction over this land by the United States Government remains the personal property of individuals located within the boundaries of the Ordnance Plant it is not taxable by the state or any subdivisions thereof. This immunity does not inhere in the property itself, it arises only because of its location on this particular land. The moment it is removed beyond the boundaries thereof, it immediately becomes subject to assessment and taxation." (Reports of Attorney General of Nebraska, 1949-1950, p. 147.)

The Attorney General's Opinion of April 11, 1952 (Reports of Attorney General, 1951-1952, p. 486) referred to by the court below (R. 204), assumed incorrectly (apparently upon the basis of a form of lease not used in this project) that the buildings leased belonged to the petitioner and would not become the property of the United States until the expiration of the lease. When the Air Force called his attention to the form of lease actually used on this project, the Attorney General admitted, in an opinion letter dated March 18, 1953 to Senator Vogel (not reported) that the opinion of April 11, 1952 "may have to be" changed, saying:

"The copy of the lease which was sent to us last April indicated that the improvements erected on the leased land would not become the property of the United States until the expiration of the lease in seventy-five years. The copy of the lease sent to us about a month ago [the lease actually used] states that the buildings are now the property of the United States.

to require a purchase for consideration in the commercial sense. It is not uncommon for local interests to donate property to the United States, in order to encourage the Government to establish a military base in the area, or for states to cede such land to the United States. Thus, the land involved in *Pacific Coast Dairy* v. *California Department of Agriculture*, 318 U. S. 285, 293 (1943), and also apparently in *Surplus Trading Co.* v. *Cook*, *supra* was donated to the United States.[12] In *Western Union Telegraph* v. *Chiles*, 214 U. S. 274 (1909), and *United States* v. *Tucker*, 122 Fed. 518 (W. D. Ky. 1903), a part of the land was ceded by the State. In each of these cases the Court treated the acquisition as a purchase covered by the constitutional provision, and in the *Pacific Coast Dairy* case flatly stated (p. 293), "Nothing turns, in our view, on the method of acquisition."

Since Nebraska has no jurisdiction over military reservations subject to the exclusive jurisdiction of the United States, it cannot, without the consent of Congress, impose taxes upon land, buildings or personal property on such reservations, whether such property is owned by the United States or private persons. In this case, this immunity would extend therefore not only to the buildings owned by the United States, but to the appliances and other equipment owned by petitioner and located on the same property.

. If the latter is true, the buildings themselves cannot be taxed because under the Enabling Act of April 19, 1864, the people of the State of Nebraska agreed, 'that no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by the United States.' "

12. In the *Pacific Coast Dairy* case, the opinion recites (318 U. S. at 293) that Congress accepted the tract now called Moffett Field "without cost to the Government". In the *Surplus Trading Co.* case, the Attorney General of Arkansas stated (281 U. S. at 648):

> "The land was not actually purchased by the United States, but was donated by public-spirited citizens of Arkansas."

consent of Congress, property of the United States may not be taxed. And in their brief below (p. 17) they stated that "they do not contend that such consent has been given" to the taxation of property owned by the Government.[21] Their argument seems to be that the buildings do not actually belong to the Government, even though the lease so provides.

1. *The provisions of the lease.* Paragraph 11 of the lease in this case provides that (R. 138):

> "The buildings and improvements erected by the Lessee constituting the aforesaid housing project, shall be and become, as completed, real estate and part of the leased land, and public buildings of the United States, leased to Lessee. * * *"

and also that upon the termination of the lease,

> "* * * all improvements made upon the leased premises shall *remain* the property of the Government without compensation * * *."

These provisions clearly mean that the buildings and improvements are the property of the United States. The buildings, as completed, become "real estate and part of the leased land, and public buildings of the United States, leased to lessee". This obviously means that the buildings become the Government's real estate to the same extent as the land itself. Language could hardly be plainer. And the improvements could not "remain" the property of the Government upon termination of the lease if they had not previously been the Government's property.

The normal rule, of course, recognized in Nebraska as well as elsewhere, is that the intention of the parties determines whether buildings are owned by lessor or lessee.

21. The brief states: "The appellants [respondents here] admit that they cannot tax property of the Federal Government without its consent and they do not contend that such consent has been given." (p. 17)

B. Congress Has Not Waived the Immunity from State Taxation of Military Housing Projects on Areas Over Which the United States Has Exclusive Jurisdiction.

Congress may, of course, waive the immunity of property on Federal territory from State or local taxation or regulation. It has done so in various statutes. But when it waives such a Federal right, it does so explicitly and unequivocally, and with knowledge that that is what it is doing. Thus, in the Buck Act of October 9, 1940, 54 Stat. 1059, codified July 30, 1947, 61 Stat. 641, 4 U. S. C. §§ 104-110, Congress specifically authorized the states to impose sales, use and income taxes in "federal areas", and to impose gasoline taxes on "United States Military or other reservations". *Cf. Howard* v. *Commissioners*, 344 U. S. 624, 627-628. In contrast, the Public Salary Tax Act of April 12, 1939, 53 Stat. 575, 5 U. S. C., Section 84a, authorizing States to levy income taxes on Federal employees, had not in terms extended to those residing and working in Federal enclaves. In order to permit taxation in such areas, it was deemed necessary to use the explicit language of the Buck Act. See Senate Rept. No. 1625, 76th Cong., 3rd Sess., p. 3 (1940).

Other statutes which prove that when Congress wishes to subject to State authority persons or transactions on Federal enclaves it does so specifically are the Assimilated Crimes Act, 62 Stat. 683, 18 U. S. C. §§ 13, 7 (3) ("Any lands reserved or acquired for the use of the United States and under the exclusive or concurrent jurisdiction thereof"); Wrongful Death Act, 45 Stat. 54, 16 U. S. C. § 457 ("within a national park or other place subject to the exclusive jurisdiction of the United States"); Workmen's Compensation Act, 49 Stat. 1938, 40 U. S. C. § 290 (lands "owned or held by the United States of America by deed or act of cession").

Frost v. *Schinkel*, 121 Neb. 784, 238 N. W. 619, 77 A. L. R. 1381 (1931). Ordinarily "when a lessee of land erects a permanent building the lessor owns it". *Hebrew Home* v. *District of Columbia*, 142 F. 2d 573, 574 (C. A. D. C. 1944); *Kutter* v. *Smith*, 2 Wall. 491 (1864). Here that intention is manifested in the lease, which demonstrates that the parties intended that the buildings were to be owned by the lessor. Cf. *United States* v. *Ansonia Brass Co.*, 218 U. S. 452, 467 (1910). It is to be noted that both parties to the lease, petitioner and the United States, agree that this is what the lease means, and that this is what they intended.[22]

2. *The lease is controlling even if a purpose of its draftsmen was to prevent state taxation.* Respondents admitted below (Br., p. 17) that the lease on its face "purports to provide that the buildings as completed become the property of the United States". But they contended that this was "a sham and a fraud on appellants and that this court should give it no force and effect", since the provisions were inserted in the lease "for the sole and only purpose of trying to avoid taxation" (Br., p. 18). And the court below found that to conclude that petitioner was not "the owner of all the improvements * * * so long as his lease was in force and effect * * * would permit plaintiff to perpetrate a sham and fraud upon the State and its governmental subdivisions" (R. 210). The last observation suggests that petitioner was at fault in some way because title to the buildings was retained by the United States, and because of the framing of the contractual arrangement

22. The court below (R. 209) referred to a representation by the president of petitioner in an application for a loan from the Douglas County Bank that petitioner is the "owner" of the apartment buildings (Ex. 16, R. 182, 101-102). When asked about this, petitioner's president stated that the form had been prepared by the bank, and that he had not observed the words "owner of" until his attention was called to them in the court (R. 109). In any event, such a statement by petitioner to a third person cannot determine or affect the interest of the United States.

> Housing] Commissioner under this Title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

Since the Commissioner has not "acquired and held" the property involved in this case, Section 807 is not applicable here, as the court below conceded (R. 199). This section, like those on which it is modeled in other Titles of the Housing Act,[13] was designed to insure that ordinary private property which the Commissioner acquired on default in repayment of a Government loan would not go off the local tax rolls. It is applicable to Wherry Act housing built on private lands. But on its face it does not waive any immunities except those arising from "this Title". It does not affect property exempt from state taxation and never on the local tax rolls for other reasons, such as location on an exclusive Federal enclave.

The Section upon which the court below did rely for its decision was Section 805 of the Wherry Act (63 Stat. 570, 12 U. S. C. Section 1748(d) (before 1955 amendment)). That Section provided in pertinent part:

> "Whenever the Secretary of the Army, Navy, or Air Force determines that it is desirable to lease real property within the meaning of the Act of August 5, 1947 (61 Stat. 774), to effectuate the purposes of this title, the Secretary concerned is authorized to lease such property under the authority of said Act upon such terms and conditions as in his opinion will best serve the national interest without regard to the lim-

13. The Wherry Act was generally modeled on Title VI of the Housing Act, which provides for FHA mortgage insurance for private housing. S. Rept. 410, 81st Cong., 1st Sess., p. 5; H. Rept. 854, 81st Cong., 1st Sess., pp. 3, 5. Provisions identical with or similar to Section 807 are found in many Titles of the National Housing Act, all of which long antedated the Wherry Act, § 7, 55 Stat. 365, 12 U. S. C. § 1706b; § 208, 48 Stat. 1252, 12 U. S. C. 1714; § 307, 48 Stat. 1255, 12 U. S. C. § 1722; § 606, 55 Stat. 61, 12 U. S. C. 1741.

> itations imposed by said Act in respect to the term or duration of the lease, and the power vested in the Secretary of the Department concerned to revoke any lease made pursuant to said Act in the event of a national emergency declared by the President shall not apply."

Certainly the bare reference in the above sentence of Section 805 of the Wherry Act to the 1947 statute was not a plain or clear manifestation of Congressional intent that the Federal immunity from State taxation be waived for leased property on exclusive Federal enclaves. The authorization to the Secretary to lease "under the authority of said [1947] Act" can reasonably be read as incorporating by reference only the provision in Section 1 of the 1947 Act, which authorizes the leasing of:

> "such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest."

Nothing in the history of the 1949 Act suggests that there was any purpose to incorporate anything but the authorizing provision in the 1947 statute,[14] or to grant any waiver of immunity beyond that provided in Section 807. In particular, there is no suggestion that Section 6 as well as Section 1 was being carried over and made applicable to

14. The only direct references to the States' right to tax is the statement in the Hearings referred to at p. 24, *supra*, which strongly suggests that projects on military reservations would not be taxable. The Committee Reports (S. Rept. 410, 81st Cong., 1st Sess.; H. Rept. 854, 81st Cong., 1st Sess.) threw light on this problem only through their general statements of the reasons underlying the statute (see pp. 3-4, *supra*), including the references to the importance and desirability of rentals which would be low enough for the lower grades of military personnel (see pp. 4, 43). The debates in Congress deal only with the basic purpose of the legislation. (95 Cong. Rec. 6537, 9679-9684 (1949).)

in a manner which might preclude the imposition of State and local property taxes. As the record demonstrates, however, the lease as well as the other documents—including even petitioner's Articles of Incorporation—were prepared on government forms which had been drafted in the offices of the Department of the Air Force.[23] Petitioner thus had no choice as to the form of the contracts into which it was entering.

In any event, the fact that a reason for employing the language found in paragraph 11 of the present form lease may have been to make it clear that the improvements were not to be taxable by local bodies does not mean that the provision of the lease is not to be given its full legal effect. The parties have a right to contract that title to buildings shall vest in the lessor.

The Court treated as irrelevant a similar argument, advanced in *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110 (1954), that the form of the cost-plus contract there involved should be disregarded because it had been adopted to escape the Court's decision in *Alabama* v. *King & Boozer*, 314 U. S. 1 (1941). The Court there assumed that this was true (p. 116), but concluded that (pp. 122-123):

> "* * * the form of contracts, when governmental immunity is not waived by Congress, may determine the effect of state taxation on federal agencies, for decisions consistently prohibit taxes levied on the property or purchases of the Government itself."

3. *Non-taxability serves a proper government purpose.*

23. This form differs in its provision for government ownership of the buildings from one used for a short time by the Department of the Army, which vested title to the buildings in the lessee, rather than in the Government. This was the form of lease involved in *Meade Heights, Inc.* v. *State Tax Commission of Maryland*, 202 Md. 20, 95 A. 2d 280 (1953), and *Conley Housing Corp.* v. *Coleman*, 211 Ga. 835, 89 S. E. 2d 482 (1955). Since those decisions do not hold that lessees may be taxed on the value of buildings *owned by the Government*, they are not in point here.

military housing. There could have been no intention to include the intermediate Sections 2, 3, 4 and 5 of the 1947 Act within the incorporation by reference, since they had no relation and could not be applied to the leasing of land for military housing.[15] It was not likely that Congress in 1947 would have realized that the reference to the power to lease under "the authority of said Act" would have included Section 6, but not Sections 2, 3, 4 and 5.

It is significant that the considerations which caused Congress to permit taxing the lessee's interest in leased properties in 1947 did not apply to the 1949 Military Housing Act.[16] The 1947 Act was concerned with Federally-owned industrial facilities, "not for the time required for public use," which were to be used by private business organizations. The 1949 Act, on the other hand, required as a prerequisite to approval of any housing project a certification of present public need that "the housing with respect to which the mortgage is made is necessary to provide adequate housing for such personnel." The reasons why Congress would not have wished properties not required for any Federal use to have been wholly tax exempt obviously do not apply to housing projects presently serving an important governmental purpose. During the hearing at

15. Section 2 repeals an earlier statute authorizing leasing. Sections 3 and 4 relate to the transfer of plants or facilities by the R. F. C. to the Defense Department. Section 5 empowers the Secretaries to impose conditions to insure the continued availability of property sold under the Surplus Property Act.

16. District Judge Forman and the dissenting Circuit Judge in the *Fort Dix* cases both considered that:

> "the reason for the reference in the 1949 legislation to the 1947 legislation was to define the types of property which the Secretaries could use for the purpose of the Military Housing Insurance Act and that was such property as was described in the 1947 legislation as was 'under the control of his Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use. * * *.'" *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 125 F. Supp. 743, 751, 225 F. 2d 473, 476.

which what is now Section 6 of the 1947 Act was suggested and drafted (see pp. 29-31, *infra*), the Senators expressed concern that the private operators of the leased plants should not have a tax advantage over their competitors who paid local property taxes.[17] But here the object is not to put the lessees on a par with competitive private enterprise, taxwise as well as otherwise, but to provide military personnel with housing at low rentals in areas in which private enterprise had not been able to provide adequate facilities. The purpose was to furnish housing as inexpensively as possible.

Under the 1947 Act, the industrial lessees were not selling to persons in whose living costs the Government had a special, as well as a pecuniary, interest of its own, but in the same commercial markets as other private competitors. Under the 1949 Act, the contrary was true, since the effectiveness as well as the cost of the military establishment depends in considerable part on the reenlistment rate of military personnel—which in turn depends on the adequacy and cost of housing facilities as a principal factor. Since Congress' reasons for waiving the Federal immunity for leased industrial facilities have no application to the military housing, it is not reasonable to assume, in the absence of clear language requiring such a result, that Congress in the 1949 Act intended to make the provision for local taxation in Section 6 of the 1947 Leasing Act applicable to such housing. Certainly the relationship between the two statutes is not sufficient to manifest the clear expression of legislative intention essential to a waiver of the immunity from local taxation for property located on exclusive Federal enclaves.

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17. Hearings before the Senate Committee on Armed Services on S. 1198 (H. R. 3471), 80th Cong., 1st Sess., a Bill to Authorize Leases of Real or Personal Property by the War and Navy Departments, pp. 30-32.

2. Even if Section 6 of the 1947 Leasing Act Be Deemed Incorporated in the Wherry Act, It Does Not Apply to Property on Exclusive Federal Enclaves.

Moreover, even if it be assumed that Section 6 of the 1947 Act was made applicable to leases under the 1949 statute, we submit that the provision in the 1947 Act was not meant to apply to property over which the State had no territorial jurisdiction. This appears plainly from the history of Section 6.

The first sentence of Section 6 was not found in the bill as it was reported to the House and submitted to the Senate Committee. Under Secretary of War Royall and Assistant Secretary of the Navy Kenney, appearing before that Committee, were questioned by Senator Byrd as to whether the leased plants would be taxable. (Hearing before the Senate Committee on Armed Services on S. 1198 (H. R. 3471), 80th Cong., 1st Sess., a Bill to Authorize Leases of Real or Personal Property by the War and Navy Departments, p. 27.). There was general agreement that the lessees should be taxed, like their competitors (pp. 27-28). Senator Baldwin suggested an amendment (p. 28) providing that:

> "Property leased to private persons, corporate or individual, pursuant to the provisions of this act, shall be subject to State and local taxation in accordance with such State and local law."

He himself questioned, however, whether the fee remaining in the Government could be taxed, although he believed that:

> "* * * they could certainly tax personal property in the plant, the machinery and things that might be used in connection with it." (p. 28.)

Senator Tydings replied, "Not unless title was in the lessee" (p. 29). When Senator Baldwin made another proposal (p. 30) that:

"A lease of real property or personal property for a term of one or more years shall for the purposes of taxation alone be deemed to transfer a title in fee simple for the purpose of the lease",

Senator Tydings again replied:

"To get down to constitutional law, you would be taxing a man on property he did not own, and I am afraid it would not hold water. The mere fact we pass a law saying you shall consider he owns it does not make him own it, and you cannot tax a man for property he does not own."

Secretary Royall pointed out that "California and one or two other states now tax the possessor of the interest in docks, and so forth, leased from the Government", and stated that he thought the "possessory interest tax" to be constitutional (p. 31). Secretary Kenney then stated that the local authorities could "make the leasehold interest itself taxable, which I think should be all that could be taxable."

Senator Tydings agreed, "That is right. Say the lease was for 5 years. You could take up the value of the lease, which would be an infinitesimal part of the value of the property."

The colloquy then continued (pp. 31-32):

"Senator Tydings. As a matter of fact, if the Government leases to corporation AB a plant for a period of 5 years without us doing anything about it, they would be taxable by each community in America that taxes leasehold property. So why should we put anything in?

"Mr. Kennedy. I do not think you should put anything in this bill.

"Senator Tydings. That is what I am getting at.

"Mr. Royall. I do not see any objection to putting it in there if there is any question about it. You had some language here that the possessor of the lease-

hold interest pursuant to this act may be subject to local or State taxation. That would help.

"Senator Tydings. Upon the lessee?

"Mr. Royall. That is right.

"The Chairman. Have you got the wording in shape now so you can read it off in full?

"Mr. Royall. This does not read very smoothly. I think we can straighten it out.

"Senator Tydyings. How would it be to say that the lessee's interest in property may be subject to tax by local authority?

"Mr. Kenney. Any interest of the lessee created pursuant to the provisions of this act may be subject to local taxation.

"The Chairman. Read it off in full, Mr. Secretary.

"Mr. Royall (reading): The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation.

"The Chairman. Is that satisfactory? All right."

The sentence thus agreed on in the Committee was *in haec verba* included in the statute as it was finally passed.

There was thus general agreement that the States could tax leasehold interests if their own law so permitted,[18] and that the purpose of adding the first sentence to Section 6 was to remove any question as to that with respect to the defense plants. Senator Baldwin's earlier suggestion, which might have permitted the whole value of the property to be taxed, was rejected because of doubts as to whether it was proper or constitutional to tax private persons for property interests still remaining in the Government.

The above discussion by those who agreed upon the language in the statute makes sense only if they were speaking of Government-owned property leased to private per-

18. Accord: *Jetton* v. *University of the South*, 208 U. S. 489 (1908).

stances. They do not suggest that a more stringent rule is to be applied to the Government than to private persons, as would be necessary if the Government as lessor were held not to be the owner.

5. *The state and locality do not provide the services for which local taxes are primarily collected.* The court below seems to have believed that it would be inequitable for the housing project and its occupants not to pay taxes to Sarpy County. But this is not a case in which a state or locality which provides governmental services to an enterprise is being deprived of the revenues needed to pay for such services. On the contrary, since Nebraska and Sarpy County do not provide such services on Offutt Air Force Base,[25] they would receive a windfall if allowed to levy substantial taxes on the military housing project. The housing project is not in a Nebraska school district (R. 63, 124), which means that Nebraska does not use tax money to pay for schooling for military dependents. Schools for Air Force dependents are paid for by the United States.[26] As has been indicated (p. 10, *supra*), the Air Force provides access roads, fire and safety (police) protection, sewage and water service, which, with schools, are the principal items for which local governments collect taxes. Petitioner itself provides roads within the project (R. 110).

25. We are advised by the Department of the Air Force that this is generally true as to military bases over which the United States has exclusive jurisdiction.

26. The Acts of September 23, 1950, 64 Stat. 967, and September 30, 1950, 64 Stat. 1100, as amended, 20 U. S. C. §§ 236-244, 251-280, provide for federal aid in the construction and operation of schools in areas affected by federal activities. We are advised that the Commissioner of Education has made arrangements under these statutes to pay for the education of children of Offutt Air Base personnel. See Annual Reports of the Commissioner of Education to Congress on the Administration of Public Laws 874 and 815, with respect to payments to the City of Bellevue, Nebraska, which adjoins Offutt Air Base. 1954 Report, pp. 65, 138; 1953 Report, pp. 59, 123; 1952 Report, pp. 52, 103; 1951 Report, pp. 28, 57.

sons in territory subject to state jurisdiction, not property in a Federal enclave. For if it were in territory subject to exclusive Federal jurisdiction, the lessee's interest would not have been taxable without the express consent of Congress. As it was finally agreed upon, the proposed amendment was designed to be declaratory of the States' right, to remove doubts as to the taxability of the lessee's interest, not to permit taxation of what could not have been taxed before. Not only was there no mention of an intention to waive jurisdiction over property on an exclusive Federal enclave; the entire discussion is consistent only with the contrary assumption that it was a property interest, not the Government's territorial jurisdiction, as to which a possible immunity was being waived.

The subsequent history of the provision is very brief. The Senate Committee Report (No. 626, 80th Cong., 1st Sess., p. 3) merely paraphrased the statutory provision.[19] On the floor of the Senate, the only comment was contained in Senator Baldwin's general explanation of the bill. As to Section 6, he said (93 Cong. Rec. 9798):

> "Section 6 expressly provides that the lessee's interest in property leased under the bill may be the subject to taxation by State or local authorities. It further provides that should such leased property itself be subsequently rendered taxable by State or local governments through any future action of Congress, any lease made under the authority of the bill shall be subject to reopening. This provision was inserted in order to prevent a lease from the Government being made a vehicle for tax avoidance."

19. "Section 6 provides that the interest a lessee holds under this act shall be subject to State or local taxes. In the event of States not presently having legislation permitting the taxing of such property, enacting such laws subsequent to the negotiation of a lease under this act, this section provides that the lease can be renegotiated.".

The last sentence does not accurately summarize the second sentence of Section 6, which provides for renegotiation if Congress, not the State, authorizes taxation of the property.

The first two sentences are of significance here because of the contrasting ways in which they refer to the permitted tax on the "lessee's interest" and to the right to readjust if "such leased *property itself* be subsequently rendered taxable" through future action of Congress. This shows an understanding that Congress regarded the property itself as something more than and different from the lessee's interest. The last sentence, which states that Section 6 was intended to prevent a lease from the Government "being made a vehicle for tax avoidance" is also important. For it presupposes a liability to tax apart from the lease, or there would be no tax to avoid. But as to property on an exclusive Federal enclave, there would be no such liability, even for property entirely privately owned. Thus, it seems plain that Senator Baldwin did not have any such property in mind.

In the House debate the subject was referred to only in one brief and incorrect sentence spoken by Representative Shafer, a member of the Committee. He declared (93 Cong. Rec. 10,492):

> "I may add to the gentleman's statement that the lease also provides that the property shall be subject to State and local taxation and in order that unfair competition may be prevented for anything manufactured in these plants by private industry."

This shorthand summarization of Section 6, which presumably meant "statute" rather than "lease", is broadly accurate if it be read as meaning that some State and local taxation was being permitted to prevent unfair competition with other manufacturers—which was probably all that the Representative intended to say. A literal reading of the sentence as indicating an intent to permit local taxation of the properties as such, as distinct from the lessee's interest in them, is inconsistent with the language of Section 6 and with all other explanations of it.

Here, again, we point out that, even if the Court concludes that the intention of Congress does not show as plainly as we think it does that there is no intention to waive immunity for Federal enclaves, as distinct from property over which the United States has title, certainly there is no affirmative evidence of an intention to permit local taxation of areas subject to exclusive Federal jurisdiction. This is true not only with respect to the incorporation by reference of the 1947 statute in the 1949 Wherry Act, but also as to the 1947 Act viewed alone. An intent on the part of Congress to waive its immunity must be clearly demonstrated. The consent is to be construed "with the strictness appropriate to the interpretation of a waiver of a defined tax immunity of the sovereign." *Oklahoma* v. *Barnsdall Refineries*, 296 U. S. 521, 526 (1936); *Austin* v. *The Aldermen*, 7 Wall. 694, 699 (1868).

That the statutory provisions involved in the Housing Act and the Leasing Act were designed to deal with ordinary situations involving Federally-*owned* property where no question of exclusive jurisdiction could arise also appears from the peculiar situation which would result from a contrary holding. Let us assume that on the Federal enclave, right next to the apartment buildings here sought to be taxed, were:

(1) Facilities on the leased premises erected and owned by utility companies, as permitted by paragraph 11 of the lease (pp. 7-8, *supra*);

(2) A Government-owned building allotted to Air Force personnel, but in which they owned the refrigerators, stoves and other appliances; and

(3) A building occupied by a contractor making equipment for aircraft, but containing the contractor's own expensive machinery and also machinery leased by him from, but still belonging to, General Motors Corporation.

None of such privately owned property on the Federal enclave would be subject to State taxation. See cases cited pp. 17-18, *supra*. And no statute waives the Federal immunity as to such property. If Section 6 of the 1947 Leasing Act is construed as applying to exclusive enclaves, and not merely to Government-owned property not located on such enclaves, we would have the anomalous situation of property owned by the Federal Government and leased to private persons being subjected to tax, while property located immediately adjacent which is owned by private persons or leased to private persons is not subject to taxation.

Certainly if Congress had intended to deal with the broad question of recession of certain tax jurisdiction in Federal areas to the States, it would not have done so by giving the States power to tax Government property or a lessee's interest in Government property, while denying to the States the right to tax the property of private individuals.

To hold that a waiver was intended here, it is necessary to assume that Congress was aware that its reference in the 1949 Act to the 1947 statute for purposes of authorization included Section 6 of the latter Act, and also that that section applied to exclusive Federal enclaves. It cannot be said that the intention of Congress to authorize a waiver of the Federal immunity has been clearly expressed when the waiver can be supported only by attributing both of these questionable assumptions to Congress, particularly when this will produce the absurd results just described. It is submitted that such an intention cannot be imputed to Congress, and that the only proper conclusion to be drawn is that the Wherry Act does not contain any waiver of immunity from State taxation for projects on areas over which the United States has exclusive jurisdiction.

II.

THE TAX HERE WAS NOT AUTHORIZED BY SECTION 6 OF THE 1947 LEASING ACT, IF THAT SECTION IS APPLICABLE, SINCE IT WAS NOT IMPOSED UPON THE "LESSEE'S INTEREST" IN THE LEASED PROPERTY BUT UPON THE PROPERTY ITSELF.

Even if it be assumed, contrary to the argument in Point I, that Section 6 of the 1947 Leasing Act applies to property on exclusive Federal enclaves, the tax imposed here was unlawful. For that section provides that only:

> "The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation." (5 U. S. C. § 626s-6.)

Here the tax was assessed not on "the lessee's interest" in the housing project, but on the buildings themselves, which are a part of the real estate belonging to the United States. Buildings owned by the United States are exempt from local taxation whether or not they are located on land subject to exclusive Federal jurisdiction. *Van Brocklin* v. *Tennessee*, 117 U. S. 151 (1886); *United States* v. *Allegheny County*, 322 U. S. 174, 176-7 (1944); *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110, 123 (1954).

As has been pointed out, the provision of the 1947 Leasing Act, stating that the lessee's interest was subject to State taxation, was thought by its authors to be declaratory of existing law. This was correct, insofar as exempt property not on exclusive enclaves is concerned. The immunity of an owner of property does not extend to the interest of a non-exempt lessee. *Jetton* v. *University of the South*, 208 U. S. 489 (1908); Annotation, 23 A. L. R. 248 (1922). But the power of a State to tax is limited to the non-exempt lessee's interest. Power to tax that interest does not mean that the interest of the immune Government may be reached. And the Government's prop-

erty interest may not be defeated by requiring the lessee to pay the tax on the Government's interest as well as his own. *United States* v. *Allegheny County*, 322 U. S. 174, discussed *infra*, pp. 50-53.

The error in the decision below is that it permitted the Government's property, not merely the lessee's interest, to be taxed. The court sought to justify this result primarily on the ground that the lessee and not the Government was the real owner of the buildings, that the Government's title was only a sham. The court could not have upheld the tax on any other theory, for the Nebraska statute upon which it relied to authorize the tax as a matter of state law only permits "improvements put on leased public lands [to] be assessed to the *owner* of said improvements".[20]

We shall show:

A. That the United States and not petitioner is the owner of the buildings; and

B. That the tax here was imposed upon the Government-owned buildings, and not upon the "lessee's interest" therein.

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20. Section 77-1209, R. R. S. Nebraska 1943, the section under which the Nebraska Supreme Court found the assessment sustainable, reads:

"All improvements put on leased public lands shall be assessed to *the owner* of such improvements as personal property, together with the lease, and listed and assessed as such in the place where the land is situated. The taxes imposed on such improvements shall be collected by levy and sale of the interest of *such owner*, the same as in all other cases of collection of taxes on personal property, or by suit in the name of the county against *such owner*." (Emphasis supplied.)

Prior to this case, no Nebraska decision had ever suggested that the phrase "leased public lands" in the above statute included Federal military reservations. Petitioner argued to the contrary in the court below, but recognizes that the interpretation of the Nebraska statute does not present an issue upon which this Court can overrule the Nebraska Supreme Court.

On these questions this court is not bound by the decision of the Nebraska Supreme Court. For this Court has the final say "in determining the meaning and effect of contracts to which the United States is a party" (*S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558, 564; *United States* v. *Allegheny County*, 322 U. S. 174, 183; *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110, 121, and cases cited), and the lease is such a contract. Furthermore, this Court is not bound by a State court's characterization of a tax or its decision as to the incidence of the tax. "Where a federal right is concerned we are not bound by the characterization given to a state tax by the state courts or legislatures, or relieved by it from the duty of considering the real nature of the tax and its effect upon the federal right asserted." *Society for Savings* v. *Bowers*, 349 U. S. 143, 151 (1955); *Carpenter* v. *Shaw*, 280 U. S. 363, 367-68 (1930); *United States* v. *Allegheny County*, 322 U. S. 174, 184.

A. The Buildings Are Owned by the United States.

The District Court for Sarpy County stated (App. to Pet. p. 8):

> "Under the terms of the lease in question the actual legal title to the apartments, the dwelling units, the buildings themselves, is in the United States Government, exactly the same as it is on the land, so that as far as taxing the apartment houses, the buildings themselves, that would be directly taxing United States Government property. * * *"

(p. 10):

> "With reference to the apartment houses, the buildings, the physical improvements themselves, it seems to me that definitely they are property of the United States Government, and are beyond the power of Sarpy County to tax as such."

Respondents, of course, have not denied that, absent the

Here, moreover, retention of title in the United States and the drafting of the lease in a manner which it was believed would avoid state taxation served proper governmental and public interests, and was in no sense a "sham". In the first place, the purpose of the statute creating the rental housing program was to provide decent housing at modest cost to military personnel. The objective was not to give servicemen advantages for their own sakes, but in order to counter the great difficulty in keeping skilled trained men in the military services.[24] A high turnover decreases the effectiveness of the armed forces. Furthermore, the training of new personnel is extremely costly to the Government, particularly as military activity becomes more technical and scientific. It was estimated that adequate housing would cause 20% more of the Air Force to reenlist (sse note 1, p. 3). General LeMay testified at the Hearings on the 1955 Housing Amendments (see pp. 5-6) (Hearings before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess., on the Housing Act of 1955, p. 480):

> "In our surveys throughout Strategic Air Command we have determined that there are five factors which influence retainability of an individual in the Air Force. These are pay, commissary privileges, post-exchange privileges, medical care, and housing. Our surveys further have indicated that housing has a greater influence upon retainability than any of the other four."

An important reason for using Government property for military housing has been to reduce the rentals which must be charged. The House and Senate Reports on the Wherry Act show the Congressional concern with the costs of the military housing to the lower grades of personnel. See p.

24. See the testimony of Col. Beck as to the importance of adequate housing to the retention of skilled Air Force personnel, as well as to morale and efficiency (R. 43-45).

4, *supra*. The Committee Reports recite that the leasing of Government-owned property was authorized not only to provide suitable sites, but also because "The leasing of such sites by the Military Establishment at nominal considerations would further make possible the achievement of lower rentals for the personnel of the establishment" (H. Rept. No. 854, 81st Cong., 1st Sess., p. 5), and "make possible rentals within the financial reach of a larger number of prospective tenants" (S. Rept. No. 410, 81st Cong., 1st Sess., p. 8).

A number of provisions of the statute manifest this purpose. The statute limits the investment per dwelling unit to $9,000 and the insured loan thereon to $8,100. Section 803(b)(3). By insuring the mortgage, the Government enabled financing to be obtained more cheaply, which meant that the amortization cost ultimately chargeable to the tenants would be less. Section 803(b)(3) limits the interest rate to 4%. The statute further provides that the FHA may regulate the mortgagor "as to rents or sales, charges, capital structure, rate of return, and methods of operation" (§ 803(b)(1)). In fact, maximum rents have been established by the FHA and Air Force working in collaboration, and the military are interested "in keeping the rents as low as possible" (R. 93). No rental increases may be made without their consent. See p. 8, *supra*.

4. *The Government Retained an Interest in the Property Greater Than That of Ordinary Lessors Whose Ownership is Universally Recognized.* It is clear that the Government retains an interest in the project immeasurably greater than that of the ordinary lessor in the enterprise conducted by his lessee. The Government here took most of the financial risk by insuring the mortgage. It determined who could occupy the apartments. It prescribed the maximum rentals. It owned the controlling voting interest in the petitioner. It provided most of the

necessary governmental services. (See pp. 8-10, 46-47.) Thus a large part, and indeed the most important parts, of the bundle of rights which is normally vested in the owner of a building remained with the Government. The petitioner-lessee is in substance little more than the manager of the project, with the right to whatever profits the Government deems reasonable. His practical position is little different from that of a managing agent. If an ordinary lessor can still be the owner of the buildings on leased property, as is usually the case, *a fortiori* the Government must be held to be the owner here, particularly in the light of the paragraph of the lease which so provides expressly.

The court below apparently thought that because the Government received only a nominal rental of $100, its interest in the property was only nominal (R. 209). But this ignores all of the other aspects of the transaction. A nominal rental was charged in order to serve the governmental purpose of providing housing for military personnel at the lowest possible cost. Such a nominal rental could be charged because the Government made sure that the property would be managed so as to accomplish this purpose by retaining control over the scale of rentals charged and the identity of the sub-tenants. These, of course, are customarily among the important rights over which the lessee of property has unrestrained control. Clearly the Government's interest in the property is *more* substantial than that of the ordinary lessor, despite the nominal rental. And yet property owned by such lessors is not taxable to the lessees.

The court below referred to the fact that the lease was for a 75-year term, and to testimony that the buildings could not be operated profitably by petitioner for more than about 35 years. This would not prove that the Government does not own the buildings, when the lease provides that it does. Nor does this mean that the buildings

will only stand for 75 years, or that they will never be operated by the Government. Judicially noticeable facts as to "temporary" buildings in parts of the District of Columbia shows that the Government maintains and operates buildings long after the originally anticipated life expectancy. But in any event, the facts referred to in the preceding pages demonstrate that during the pendency of the lease the Government has a substantial interest in the apartment buildings, much more than that of the ordinary private lessor of similar property.

The court below and respondents have relied upon such cases as *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558 (1946), *New Brunswick* v. *United States*, 276 U. S. 547 (1928), and *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375 (1904). In the first two of these cases the Government had sold land and retained only a security interest, similar to a mortgagee's, in case the purchaser defaulted. The Court pointed out that (327 U. S. at 570, 276 U. S. at 555):

> "'In equity the situation was then the same as if the Corporation had conveyed title to the purchasers, as owners, and they had mortgaged the lots to the Corporation to secure the unpaid purchase money'."

In the *Baltimore* case the Government conveyed the land, subject only to the condition subsequent that the property revert to the United States if it ceased to be used as a dry dock. In the last case, the Government did not possess title at all, and in the first two, its legal title was a bare security interest.

In similar transactions between private persons, the buyers, not the sellers, would be regarded as the owners for tax purposes. The contrary is true as to lessors, even when they do not retain the substantive control and interest that the Government does here. Those cases properly hold that the Government's security title is no more substantive than a private person's in identical circum-

These are the principal items for which local taxes are collected. The respondents have asserted in their brief in opposition that documents are recorded with the County Clerk, that occupants of the apartments use the county courts, and the services of the County Treasurer's Offices for obtaining automobile licenses, and that the county provides police protection when they are off the base. The record is silent as to these matters, except for the recording. This Court has declared that "recording may not be made the occasion for taxing the Government's property". *United States* v. *Allegheny County*, 322 U. S. 174, 183 (1944). But, in any event, the services of the County Clerk and Treasurer are performed for fees. Automobile licenses are paid for. The police protection provided off the base is the same as that accorded to other non-residents while they are in the county, such as citizens of Iowa living only two miles away across the state line. The other services referred to are relatively inexpensive. Under the Buck Act (4 U. S. C. §§ 104-110), residents of military reservations must pay state sales,[27] use, income and gasoline taxes, which should amply compensate for the few inexpensive services which the state and locality can be said to provide.

27. The Florida cases relied on by respondents involve sales taxes, which the Buck Act permits to be imposed in federal areas. *Gay* v. *Jemison*, 52 So. 2d 137 (Fla. 1951); *Tampa Bay Garden Apartments* v. *Gay*, 55 So. 2d 739 (Fla. 1951). Since there was clearly no federal impediment to the state tax, the *Jemison* case was concerned with the construction of a Florida statutory exemption for sales of property to become part of a federally owned project. In holding that the project was not federally owned, the Florida court made no reference to the provisions of the lease or other factors discussed in this brief. The *Tampa Bay* case erroneously concluded that the project had no connection with a federal purpose, that, therefore, the United States Constitution did not authorize exclusive federal jurisdiction, and that the Florida cession statute did not cede such jurisdiction.

The other cases referred to by the court below held only that the taxes involved were authorized by the Buck Act. *Davis* v. *Howard*, 306 Ky. 149, 206 S. W. 2d 467 (1947); *Kiker* v. *Philadelphia*, 346 Pa. 624, 31 A. 2d 289, certiorari denied 320 U. S. 741 (1943).

To require the military personnel to pay taxes for services which the State and local governments do not furnish them would be to create an inequity, not to abolish one. Furthermore, as the District Court for Sarpy County observed (App. to Pet. pp. 15-16):

> "* * * I am only happy for Sarpy County that it isn't a matter where they have had this item of valuation on the tax books for two or three million dollars for the last ten years and would now be losing it from the tax rolls. This is something you never had on the tax books before; certainly it isn't representing the character of loss as if you had it on the tax books and found that it was deeded to a charitable or educational institution out from under you and you would lose that much valuation."

The above analysis shows that the United States is the owner of the apartment buildings both on the face of the controlling contract and as a matter of governmental and economic substance. On no theory can it be said that Congress has consented to the taxation of Government-owned property, as respondents admitted below (Br., p. 17). This should be sufficient to dispose of the case insofar as the taxes on the Government-owned buildings are concerned.

B. The Assessment Here Was Upon the Government's Buildings, Not Upon a Lessee's Interest in Them.

We have shown that the buildings belonged to the United States. The most that Sarpy County could tax, assuming Section 6 of the 1947 Act to be applicable, was petitioner's interest in the buildings as lessee, not the property itself.

Section 6 clearly differentiates between the "lessee's interest" and the property itself. The first sentence of the Section permits the "lessee's interest" to be taxed. The second sentence[28] refers to the "property" and pro-

28. "Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that

vides for renegotiation of the lease if Congress subsequently permits taxation of "such property". Furthermore, the legislative history summarized at pp. 29-31, *supra*, shows that Senator Baldwin's proposals to allow taxation of the leased property itself were rejected by the Committee, on the ground that it would be improper to tax the lessee on the property owned by the Government. He himself recognized the distinction between taxing the property and the lessee's interest in his subsequent statement on the Senate floor. See pp. 32-33, *supra*.

The tax here was assessed not upon a "lessee's interest" in the buildings and appliances but against the property itself. That is what the Assessor said he was evaluating (R. 121). Insofar as the buildings were concerned, he merely looked at them from the outside, and checked the County Clerk's mortgage records "and things like that" (R. 122). The amount he inserted in the assessment form under "Improvements On Leased Land" was, he admitted, his "opinion as to the value of those buildings" (R. 121). This was included in the portion of the form for "Tangible" property (R. 144A).

The District Court for Sarpy County held that in view of these facts, there was no need to determine whether a leasehold interest was taxable[29]. For, the court concluded (App. to Pet., p. 14):

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such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated" (Appendix, *infra*, p. 68).

29. "Whether that is an item of property that the Nebraska statutes contemplates could be segregated for taxes, or whether a 75 year lease on an apartment building, or office building, could be segregated for taxes is not determined; merely that it isn't done doesn't necessarily mean that it couldn't be done; or merely because it would become a complex problem to figure out the proper value for such lease wouldn't necessarily mean it isn't an item of taxable property; yet in my view that question is not presented here and is not being passed upon; * * * and I am not making any commitment as to whether or not Sarpy County could tax the value of a leasehold interest in something to which possibly Congress has consented * * *" (App. to Pet., p. 14).

> "* * * certainly by no stretch of reasonable construction can the listing of improvements on leased property, or the listing of apartment houses, as was done on the 1952 personal property tax schedule return by the assessor for the plaintiff in this case, be properly construed to be returning for taxation the value of a leasehold interest therein. It is attempting to tax the improvements themselves, which I say you can not do because they belong to the United States Government and that has removed them beyond the field of Sarpy County to tax without consent * * *"

This conclusion was entirely correct. The assessment of the buildings was not an assessment of the lessee's interest, within the meaning of the Federal statute. A property tax is imposed on what is assessed and valued.[30] If that property is immune from State taxation, the States cannot tax it by characterizing the tax as on something or on somebody else.

United States v. *Allegheny County*, 322 U. S. 174, is directly in point. In that case the Mesta Machine Co. contracted to manufacture ordnance in Mesta's own plant. The Government leased certain machinery to Mesta to use in the manufacture of the artillery. This machinery was bolted on concrete foundations in Mesta's plant. The assessing authorities of Allegheny County separately appraised the machinery and added its value to the assessment against Mesta's plant. The Supreme Court of Pennsylvania held that the machinery could be taxed to Mesta as part of its plant. This Court reversed. It found (p. 185):

> "The procedure of the assessors is consistent with no other theory than that the machinery itself was being assessed and taxed exactly as land was being assessed and taxed."

30. In *United States* v. *Allegheny County*, 322 U. S. 174, 184 (1944), the Court noted that "the old and widely used ad valorem general property tax * * * involves the identification and valuation of the variable individual holdings to be taxed, commonly called the assessment * * *."

Similarly here, the record demonstrates, as the trial court held (App. to Pet., p. 14), that the assessment was imposed directly upon the Government-owned buildings and the appliances, and not upon a leasehold interest. As in the *Allegheny* case, "The assessor simply forthrightly valued * * * the Government's machines as machinery," here the assessor valued the Government's buildings and improvements as "improvements". The Court said in that case (p. 185):

> "We discern little theoretical difference, and no practical difference at all, between what was done and what would be done if the machinery were taxed in form. Its full value was ascertained and added to the base to which the annual rates would apply * * *."

The same is true of the Government-owned buildings here, except that the assessment schedule shows that they were taxed in form as well as in substance.

In the *Allegheny* case the Court rejected the argument that the tax was valid "because the incidence of the tax is borne by Mesta, not the Government" (p. 186). The Court declared that although it had upheld taxes on contractors with the Government (p. 186):

> "We have not held either that the Government could be taxed or its contractors taxed because property of the Government was in their hands."

The Court found it unnecessary to decide whether Mesta's interest as lessee-bailee of the machinery was taxable. The Court referred to Mesta's restricted "leasehold interest", but stated that (p. 187):

> "* * * the State has made no effort to segregate Mesta's interest and tax it. The full value of the property, including the whole ownership interest, as well as whatever value proper appraisal might attribute to the leasehold, was included in Mesta's assessment."

Just as the "full value" of the machinery was assessed in that case, so was the full value of the buildings assessed here. In neither case was there any attempt to separate the lessee's interest from that of the Government as owner.

In concluding, the Court pointed out that State's efforts to tax Government property were almost invariably directed at some private possessor of such property (pp. 187-189):

> "We think, however, that the Government's property interests are not taxable either to it or to its bailee. The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed as we have held. But neither he nor the Government can be taxed for the Government's property interest. Rarely does a state or municipality pursue the Federal Government itself. Most of the immunity cases we have been called upon to deal with involved assertion of a right to tax Government property against an individual.
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> "* * * We hold that Government-owned property, to the full extent of the Government's interest therein, is immune from taxation, either as against the Government itself or as against one who holds it as a bailee."

Although the *Allegheny* case does not involve an interpretation of the phrase "lessee's interest" in a statute waiving immunity, it recognizes that a private "lessee's interest" in Government property may be taxed—which accords with the view expressed by the draftsmen of Section 6 of the 1947 Act that it was merely declaratory of

existing law (See pp. 30-31, *supra*).[31] The Court's holding that an assessment to the lessee of the full value of the leased property was a tax on the Government's property itself, and not on anything less, seems clearly inconsistent with the contention of respondents here that an assessment of the full value of the apartment buildings is only a tax on the lessee's interest and not on that of the Government which owns the buildings.

The court below implied that the tax was valid because the lessee's interest "for all intents and purposes was the actual value of all the buildings and improvements" (R. 209). But the issue is not as to the value of the lessee's interest, but whether the tax was imposed upon that interest or upon the tangible property itself, which was owned by the United States and not taxable. Just as in the *Allegheny* case, the assessor "made no effort to segregate" and tax the leasehold interest, or to determine its value. The Nebraska court cannot transform a tax on the Government properties into a tax on the lessee's interest.

Furthermore, a lessee's interest, by its very nature, is less valuable than the full title of which it is a part. This certainly was assumed in the discussion which led to the drafting of what is now Section 6. See pp. 29-30, *supra*. A tax on the full value of the buildings obviously includes the interest of the United States, as owner of the buildings, which Congress did not authorize the states to tax.

It will be argued that the relation between the length of the lease—75 years—and the profitable life expectancy of the buildings shows that the Government's interest in the buildings is zero, and the lessee's the equivalent of their full economic value. As we will show in a moment (*infra*, pp. 55-57), this is not the way in which long-term leases are

31. *Jetton v. University of the South*, 208 U. S. 489 (1908), permits taxation of a lessee's interest, but recognizes that such an interest "is a distinct and separate interest from that of the owner of the fee." (p. 504)

customarily valued. In any event, here the lessee has been deprived of control of the most important of the rights of the ordinary private lessee. He cannot do what he wants with the property. He may not assign his lease, or even sublet the apartments except as the Government permits. He is not free to determine the rents which the tenants must pay. The lessee thus cannot use the lease—as ordinary lessees of other property can—to obtain as much revenue as economic conditions permit. Control over all those matters is retained by the Government.

This curtailment of the lessee's rights means that his interest as lessee is substantially less valuable than would be that of other persons leasing similar buildings for the same period. The value of the buildings to him is likewise clearly not as great, under a lease containing restrictions as to such vital matters, as would be the value to an unrestricted owner in fee. And yet the Assessor seeks to tax him on the full value, just as he would such an unrestricted owner. Since the petitioner's interest is clearly less than would be that of an unrestricted owner of the buildings, to tax petitioner on their full value is not only to tax *more* than the lessee's interest, but also to tax the interest of the United States.

It is not necessary here to determine just how a lessee's interest should be evaluated. This Court in *United States* v. *Allegheny County, supra,* and other courts have held that where the full value of property has been assessed to a lessee as though he were the owner in fee, the assessment is invalid as a matter of law and the question of proper valuation and taxation of the lessee's interest is not presented for determination.[32] *State* v. *Springfield Convention*

32. In *State* v. *Springfield Convention Hall Ass'n, supra,* an assessment was made "against the 'building only' as the property

Hall Ass'n, 301 Mo. 663, 257 S. W. 113 (1923); *State* v. *Thompson*, 149 Mo. 441, 51 S. W. 98 (1899); *State* v. *Taylor*, 72 Tex. 297, 12 S. W. 176 (1888). The trial judge properly recognized the limitations on the judicial function when he asserted that (App. to Pet., p. 14):

> "* * * I do not know what the value of such leasehold interest would be, but that is something that does not have to be passed upon at this time in order to decide the issues in the case presented * * *."

This is in accordance with the established policy of this Court not to pass upon "problems merely hypothetical" (*Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 384 (1933)), but to limit itself to "concrete and specific issues" raised by facts in the record of the particular case. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 746 (1942); *United States* v. *Hamburg-American Co.*, 239 U. S. 466, 475-476 (1916); *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324, 339 (1936).

For present purposes, it should be sufficient to state that although the problem of evaluating a leasehold interest is not simple, no authorities (except the cases presently before this Court) hold or suggest that in circumstances where the lease subordinates the lessee to the lessor-owner in control of those economic rights which enable a lessee to

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of the defendant." In affirming a judgment for the defendant lessee in an action to recover taxes on the building, the court stated (301 Mo. at 672, 257 S. W. at 116):

> "This instrument created a leasehold estate, covering both lot and building and not an ownership of the building. In such case, where there is no assessment of the leasehold estate (as here), then there can be no judgment for taxes against the lessee."

And in *State* v. *Taylor*, *supra*, the court declared (72 Tex. at 297, 12 S. W. at 177):

> "* * * it is not necessary for us to inquire whether appellees are liable to taxation on their leasehold estate. No assessment of that was made, and the courts could not make the assessment if, on inquiry, it should be found that the leasehold held by appellees was subject to taxation."

attain the full value of the property leased, the full value of such property can be charged to the lessee. Indeed, where such an assessment was suggested by the taxing authorities, a reviewing court stated: "If * * * respondent were compelled to pay upon the amount of its investment, the tax would be grossly excessive." *Metropolitan Building Co.* v. *King County*, 62 Wash. 409, 412, 113 Pac. 1114, 1115 (1911).

The worth of even an unrestricted lessee's interest is usually reckoned as the value of the term less the rent reserved in the lease. *Metropolitan Building Co.* v. *King County*, 62 Wash. 409, 113 Pac. 1114 (1911);[33] *People* v. *Barker*, 121 N. Y. App. Div. 661, 106 N. Y. Supp. 336 (1907), aff'd 200 N. Y. 509, 93 N. E. 78 (1910); *Appeal Tax Court* v. *Western Md. R. Co.*, 50 Md. 274, 298 (1879); Annotation, *Method or rule for valuation of leasehold interest for purpose of property taxation*, 84 A. L. R. 1310 (1933). Contra, *De Luz Homes, Inc.* v. *County of San Diego*, 45 Adv. Cal. 575, 290 P. 2d 544 (1955), overruling *Blinn Lumber Co.* v. *Los Angeles County*, 216 Cal. 468, 14 P. 2d 516 (1932), in which California had followed the general rule. Where, as here, the rent is nominal but the lessee is obligated to erect substantial improvements which inure to the benefit of the lessor, the cost of such improvements is recognized as additional rent. *State* v. *Springfield Convention Hall Ass'n*, 301 Mo. 663, 257 S. W. 113 (1923); *Maricopa County* v. *Fox Riverside Theatre Corp.*, 60 Ariz. 260, 135 Pac. 2d 513, 514 (1943).[34] Thus the value of such a

33. "In determining the worth of the leasehold, the courts have universally held that it is the value of the term less the rent reserved." *Metropolitan Building Co.* v. *King County*, 62 Wash. 409, 410, 113 Pac. 1114, 1115.

34. In the *Springfield* and *Maricopa* cases, the courts held that buildings constructed on leased public lands could not be taxed to the lessees. In the *Springfield* case the court said (301 Mo. at 674, 257 S. W. at 116):

"The lease, read as a whole, means that the city leased to

leasehold is computed by deducting from the potential income which is to be capitalized, all costs, including the amortized cost of the improvements. *In Re Metropolitan Building Co.*, 144 Wash. 469, 258 P. 473, 476 (1927); *People* v. *Feitner*, 61 N. Y. App. Div. 129, 70 N. Y. Supp. 500, 502 (1901), affirmed 171 N. Y. 641, 63 N. E. 786 (1902).

C. The Tax on the Appliances and Furniture Was Not Imposed on a Lessee's Interest.

The assessment on the appliances (including the furniture) is invalid for a different reason. There is no question, of course, that this personal property is owned by petitioner. As property on an exclusive Federal enclave, the appliances are not taxable by the State, except to the extent that Congress has granted permission (see pp. 17-18, *supra*). But no statute has waived the Federal immunity for such property. The provision of the 1947 Leasing Act relied upon by the court below deals only with *leased* Government property. It was not concerned with anything else. As has been seen, it provides that:

> "The lessee's interest, *made or created pursuant to the provisions of this Act*, shall be made subject to State or local taxation." (Emphasis supplied.)

Here the appliances were purchased by petitioner in its own name, and never belonged to the Government. They have not been leased by the Government to petitioner.

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defendant the land and the building which defendant might put upon it for a period of 50 years. The cost of the building and the additional sum of $50,000 in annual payments constituted the rent or consideration for the lease."

In the *Maricopa* case, the court said (60 Ariz. at 264, 135 P. 2d at 514):

> "In this case, like the one herein, substantial buildings and improvements were erected and, as in this case, they were part of the consideration for the lease."

Petitioner did not acquire an interest in them as a lessee, from the Government or anyone else.

Furthermore, the petitioner's interest in such property is not derived from any rights created by the 1947 Leasing Act, but entirely from its own purchases of the property. The only "lessee's interest" which that statute authorizes to be taxed is an "interest, made or created pursuant to the provisions of this Act". "This Act" deals only with the leasing of Government property, not with other property which a lessee may own. And clearly the petitioner's interest in its own property was not "made or created" by or under or pursuant to the provisions of the 1947 statute. The Act neither made nor created petitioner's interest in the appliances purchased from private suppliers.

As the trial court in this case aptly stated (App. to Pet., p. 12):

> "* * * construction of the consent statute—of the consent section of the statute involved—certainly cannot be extended to include such property because that property is not even owned by the United States Government. What consent was being granted? Consent to lease Government owned rea and personal property. That is the consent that you are talking about in that section of the 1947 Act pertaining to the leasing of real and personal property of the Government. The Government never owned the appliances. * * * so that the matter of giving consent to taxing of leased personal property would not be applicable to the personal property involved in this case at all, if there is by proper construction a consent of Congress even granted."

Whatever interest the petitioner had in such property was not made or created under the Act or by a lease. The status of this property, therefore, was the same as that of any personal property on an exclusive Federal enclave, unaffected by Section 6.

CONCLUSION.

For the reasons set forth above, the judgment of the court below should be reversed.

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APPENDIX.

STATUTES INVOLVED.

1. The Wherry Military Housing Act of August 8, 1949, 63 Stat. 570, 12 U. S. C. § 1748, which added Title VIII—Military Housing Insurance to the National Housing Act. The pertinent provisions read as follows:

"Sec. 803. (a) In order to assist in relieving the acute shortage of housing which now exists at or in areas adjacent to military installations because of uncertainty as to the permanency of such installations and to increase the supply of rental housing accommodations available to military and civilian personnel at such installations, the Commissioner is authorized, upon application of the mortgagee, to insure mortgages (including advances on such mortgages during construction) which are eligible for insurance as hereinafter provided, and, upon such terms as the Commissioner may prescribe, to make commitments for so insuring such mortgages prior to the date of their execution or disbursement thereon: *Provided*, That the aggregate amount of principal obligations of all mortgages insured under this title shall not exceed $500,000,000 except that with the approval of the President such aggregate amount may be increased to not to exceed $1,000,000,000: *And provided further*, That no mortgage shall be insured under this title after July 1, 1951, except (A) pursuant to a commitment to insure issued on or before such date, or (B) a mortgage given to refinance an existing mortgage insured under this title and which does not exceed the original principal amount and unexpired term of such existing mortgage.

"(b) To be eligible for insurance under this title a mortgage shall meet the following conditions:

"(1) The mortgaged property shall be held by a mortgagor approved by the Commissioner. The Com-

missioner may, in his discretion, require such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation. The Commissioner may make such contracts with, and acquire for not to exceed $100 stock or interest in, any such mortgagor, as the Commissioner may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the Military Housing Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Commissioner under the insurance.

"(2) The mortgaged property shall be designed for rent for residential use by civilian or military personnel of the Army, Navy, Marine Corps, or Air Force (including Government contractors' employees) assigned to duty at the military installation at or in the area of which such property is constructed. Nothwithstanding the provisions of any other law, preference or priority of opportunity in the occupancy of the mortgaged property for such personnel and their immediate families shall be provided under such regulations and procedures as may be prescribed by the Commissioner. No mortgage shall be insured under this title unless the Secretary of Defense or his designee shall have certified to the Commissioner that the housing with respect to which the mortgage is made is necessary to provide adequate housing for such personnel, that such installation is deemed to be a permanent part of the Military Establishment, and that there is no present intention to substantially curtail activities at such installation.

"(3) The mortgage shall involve a principal obligation in an amount—

"(A) not to exceed $5,000,000; and

"(B) not to exceed 90 per centum of the amount which the Commissioner estimates will be the replacement cost of the property or project when the proposed improvements are completed; and

"(C) not to exceed an average of $8,100 per family unit for such part of such property or project as may

be attributable to dwelling use, except that where the Secretary of Defense or his designee in exceptional cases certifies and the Commissioner concurs in such certification that the needs would be better served by single-family detached dwelling units the mortgage may involve a principal obligation not to exceed $9,000 per family unit for such part of such property as may be attributable to such dwelling units.

"The mortgage shall provide for complete amortization by periodic payment within such terms as the Commissioner shall prescribe, and shall bear interest (exclusive of premium charges for insurance) at not to exceed 4 per centum per annum of the amount of the principal obligation outstanding at any time. The Commissioner may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release.

* * * * *

"Sec. 805. Whenever the Secretary of the Army, Navy, or Air Force determines that it is desirable to lease real property within the meaning of the Act of August 5, 1947 (61 Stat. 774), to effectuate the purposes of this title, the Secretary concerned is authorized to lease such property under the authority of said Act upon such terms and conditions as in his opinion will best serve the national interest without regard to the limitations imposed by said Act in respect to the term or duration of the lease, and the power vested in the Secretary of the Department concerned to revoke any lease made pursuant to said Act in the event of a national emergency declared by the President shall not apply. Whenever the Secretary of the Army, Navy, or Air Force determines it to be in the interest of national defense, he is hereby authorized to sell, transfer, and convey at fair value (as determined by him), for use under this title, all or any right, title, and interest in any real property under his jurisdiction, notwithstanding any limitations or requirements of law with respect to the use

or disposition of such property. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force.

* * * * * * *

"Sec. 807. Nothing in this title shall be construed to exempt any real property acquired and held by the Commissioner under this title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

2. Housing Amendments of 1955, Public Law No. 345, Ch. 783, 84th Cong. 1st Sess., approved August 11, 1955. The pertinent provisions read as follows:

"Sec. 805. Whenever the Secretary of the Army, Navy, or Air Force determines that it is necessary to lease any land held by the United States on or near a military installation to effectuate the purposes of this title, he may lease such land upon such terms and conditions as will, in his opinion, best serve the national interest. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force.

* * * * * * *

"Sec. 807. The Commissioner is authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of this title. In the performance of, and with respect to, the functions, powers and duties vested in him by this title, the Commissioner, notwithstanding the provisions of any other law, shall appoint a Special Assistant for Armed Services Housing for Mortgage Insurance, and provide the Special Assistant with adequate staff, whose whole responsibility will be to expedite operations under this title and to eliminate administrative obstacles to the full utilization of this title under the direction and supervision of the Commissioner."

The 1955 statute contains the following savings provision:

"Sec. 408. Notwithstanding the provisions of section 401 of this Act, the provisions of title VIII of the National Housing Act in effect prior to the enactment of the Housing Amendments of 1955 shall continue in full force and effect with respect to all mortgages insured pursuant to a certification by the Secretary of Defense or his designee made on or before June 30, 1955, and a commitment to insure issued on or before June 30, 1956 or pursuant to a certification by the Atomic Energy Commission or its designee made on or before June 30, 1956, except that the maximum dollar amount for each such mortgage shall be $12,500,000."

3. Military Leasing Act of August 5, 1947, 61 Stat. 774, 5 U. S. C. § 626s-3, *et seq.*

"[Section 1] * * * Whenever the Secretary of War or the Secretary of the Navy [or the Secretary of the Air Force] shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Department concerned shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary of the Department concerned may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law.

Each such lease shall contain a provision permitting the Secretary of the Department concerned to revoke the lease at any time, unless the Secretary shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary of the Department concerned during a national emergency declared by the President. Notwithstanding section 321 of the Act of June 30, 1932 (47 Stat. 412; U. S. C., title 40, sec. 303b), or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department concerned to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise hereinabove provided, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority herein granted shall not apply to oil, mineral, or phosphate lands. The Secretary of War or the Secretary of the Navy, as the case may be, shall submit to the Congress on the 1st day of January and the 1st day of July of each year, following the enactment of this law, a report of all leases entered into in accordance with the provisions of this Act.

"Sec. 2. The Act of July 28, 1892, as amended (27 Stat. 321; 45 Stat. 988; U. S. C., title 40, sec. 303), is hereby repealed. So much of the Naval Appropriation Act of August 29, 1916, as is contained under the heading 'Lease of Naval Lands', as amended (39 Stat. 559; 45 Stat. 990; U. S. C., title 34, sec. 522), is hereby repealed.

"Sec. 3. (a) Notwithstanding any other provision of law, all right, title, and interest of Reconstruction Finance Corporation in any plants or facilities, and the machinery, equipment, and other personal property accessory thereto, acquired by Defense Plant Corporation or Reconstruction Finance Corporation in accordance with authority contained in the Reconstruction Finance Corporation Act (U. S. C., title 15, secs. 601-617) pursuant to undertakings by the War Department or the Navy Department to reimburse Defense Plant Corporation or Reconstruction Finance Corporation to the extent of the unrecovered cost thereof in the event Congress authorizes such reimbursement by making appropriations therefor, shall be transferred by Reconstruction Finance Corporation (or by War Assets Administration, if such property has been declared surplus) to the War Department or the Navy Department upon certification by the Secretary of War or the Secretary of the Navy made within six months after the enactment hereof, that the retention of such plants or facilities, and the machinery, equipment, and other personal property accessory thereto, by the War Department or the Navy Department, as the case may be, is necessary for the maintenance of an adequate Military or Naval Establishment including industrial reserve.

(b) Notwithstanding any other provision of law, all right, title, and interest of Reconstruction Finance Corporation or War Assets Administration in any machinery or equipment shall be transferred by the agency having control thereof to the War Department or the Navy Department upon certification by the Secretary of War or the Secretary of the Navy made within six months after the enactment hereof, that the retention of such machinery or equipment by the War Department or the Navy Department, is necessary for the maintenance of an adequate Military or Naval Establishment, including industrial reserve.

"Sec. 4. Any transfer made pursuant to section 3 of this Act shall be approved by the Director of the Bureau of the Budget to the extent and in the manner determined by him and shall be made without charge

or reimbursement from the funds available to the War Department or the Navy Department, except for costs of packing, handling, and transportation of machinery and equipment transferred under section 3 (b) hereof.

"Sec. 5. (a) Whenever in the opinion of the Secretary of War or the Secretary of the Navy, as the case may be, the interests of national defense require assurance of the continued availability for war-production purposes of the industrial capacity of shipyards, plants, and equipment which are surplus to the needs of their respective Departments or of the Reconstruction Finance Corporation within the meaning of the Surplus Property Act of 1944, they are authorized to direct the imposition of such terms, conditions, restrictions, and reservations in the disposition of such property by the disposal agency under said Act as will in the opinion of the Secretary concerned be adequate to assure such continued availability.

(b) In the event the disposal agency is unable to dispose of any such industrial plants and equipment subject to such terms, conditions, restrictions, or reservations as have been imposed, within a reasonable time and after such property shall have been offered for sale and reasonable efforts made to dispose of the same, the Department imposing such terms, conditions, restrictions, or reservations shall (1) modify them to the extent necessary to permit the sale or lease of such property, (2) withdraw the property from surplus, or, in the case of Reconstruction Finance Corporation property, request a transfer thereof in the manner provided in sections 3 (a) and 4 of this Act, or (3) eliminate and waive the requirement for the imposition of any terms, conditions, restrictions, or reservations made under the authority of this section.

"Sec. 6. The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated."